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September 28, 1994

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Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: FCC Request for Information JK-1200C
<u>MM Docket 92-266, Cable Rate Regulation</u>

Dear Mr. Caton,

On Tuesday, September 27, 1994, Lifetime Television submitted a letter in response to the Cable Services Bureau's Request for Information (JK-1200C, dated September 19, 1994) in the above-referenced docket. Due to time constraints, only a facsimile copy of the original letter was available for filing.

This submission consists of the actual letter bearing the original signature.

Please date-stamp the attached duplicate as received and return it via the messenger for our files.

Should any questions arise regarding this submission, kindly contact the undersigned.

Respectfully submitted,

Rosemary C. Harold

cc: Meredith J. Jones

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JANE TOLINGER
EXECUTIVE VICE PRESIDENT

September 27, 1994

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VIA TELECOPIER
Meredith J. Jones
Chief, Cable Services Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Response to September 19, 1994 Request for Information (JK-1200C)

MM Docket No. 92-266

Dear Ms. Jones:

We appreciate that you have requested us to submit additional information that may assist the Cable Services Bureau in its consideration of the "going-forward" issues. We are pleased to provide assistance given the critical importance of the issues at stake, especially given our inability as an independent programmer to rely on the benefits of assured access and financial support inherent in vertically integrated operator-programmer relationships. Faced as well with the ever growing consolidation of cable system ownership and the attendant loss of license fee revenues, independent program services like Lifetime are left most vulnerable as to the terms by which they will be carried, if at all. Rate regulation will not have served its purpose if it penalizes popular services providing high quality programming at low prices

As you know, Lifetime Television ("Lifetime") has submitted Comments dated June 29, 1994 and Reply Comments dated July 29, 1994 in response to the Commission's Fifth Notice of Proposed Rulemaking regarding the need to restore greater programming investment incentives for cable operators. Lifetime has urged the Commission to modify the going-forward methodology in order to provide operators with significant, even-handed incentives to invest in the development of quality programming, both through initial investment in newly added services and through continued investment in existing services already carried on a regulated tier. Lifetime has urged the adoption of an approach based on a flat-fee mark-up for incremental net additions of program channels to create a true incentive for operators to add services to regulated tiers without artificially encouraging the switch-out or migration of low-cost, advertiser-supported existing services. Lifetime has also urged a corresponding minimum mark-up approach, and a separate cap, if any, for operator investment in existing program services. Lifetime believes that the record gathered to date in response to the Fifth NPRM makes clear that a flat-fee mark-up of at least 25 cents per subscriber, coupled with a minimum monetary mark-up on license fee increases, is the best approach for creating equitable incentives for investment in and carriage of all types of program services.

1. What specific forms of monetary or non-monetary consideration, other than license fees, are involved in agreements for carriage of your programming services on cable systems?

a. Do these forms of consideration generally vary depending on whether the programming services are newly offered services, new to a system, or continuing on a system?

b. Do these forms of consideration generally vary depending on the size of the operator?

c. What specific obligations (e.g., promotional obligations) do you generally make as a programmer in carriage agreements?

d. What specific obligations do cable operators generally agree to undertake in carriage agreements?

e. What is the typical dollar amount value of each of the above forms of consideration?

Generally, Lifetime's affiliation agreements grant a non-exclusive license to cable operators to distribute the Lifetime Network to all of their affiliate systems for a fixed license period. Lifetime also grants cable operators the right to sell and retain revenues from a fixed number of local commercial availabilities per hour.

In general, in exchange for Lifetime's commitments, cable operators agree to distribute and exhibit the Lifetime Network on their affiliate systems as part of the basic or expanded basic package provided to subscribers (which are generally defined as the "lifeline" package of services and the next most widely distributed package). Cable operators must also meet a "minimum subscriber commitment" threshold throughout the license period requiring them to deliver the Lifetime Network to a high percentage of the subscribers on all of the affiliate systems on an MSO-wide basis, whether or not such systems carry the Lifetime Network. Cable operators agree to pay monthly license fees (which are fixed with annual increases) for all Lifetime subscribers (or based on the "minimum subscriber commitment, if higher), and cable operators agree to exhibit the Lifetime Network in its entirety on a 24-hour a day basis. Provisions are also included in the affiliation agreements with respect to channel placement.

The forms of consideration described above do not generally vary depending on whether the Lifetime Network is new to a system or continuing on a system or depending on the size of the operator, except that volume discounts to the license fees are generally offered by Lifetime to MSO's (or other multi-channel distributors) based on the number of Lifetime subscribers they serve

From time to time, Lifetime may offer launch support (typically in the form of a waiver of license fees for several months) to large operators to encourage them to add the Lifetime Network to affiliate systems. In addition, Lifetime provides various promotional materials and support to cable operators in the ordinary course of business, including for some larger operators, a marketing allowance covering a portion of certain expenses incurred in promoting the Lifetime Network (e.g., cross-channel promotion).

2. *How frequently do carriage agreements for your programming service require operators to carry programming on a regulated tier, provide for carriage exclusively on an a la carte basis, or give operators the option to carry your programming services on an a la carte basis?*

   a. *Does this generally vary depending on whether the programming services are newly offered services, new to a system, or continuing on a system?*

   b. *Does this generally vary depending on the size of the operator?*

   c. *What other specific factors have been relevant to provisions for a la carte carriage?*

In addition to the carriage requirements described in Paragraph 1 above, Lifetime's affiliation agreements prohibit carriage of the Lifetime Network on an a la carte or stand-alone basis, and they also prohibit the payment of any separate per-channel fees or the packaging of the Lifetime Network with any "premium" service for a pay charge. These prohibitions apply to all cable operators, regardless of the operator's size and regardless of whether the Lifetime Network is new to a system or continuing on a system. As Lifetime has explained to the Commission and the Cable Services Bureau, Lifetime's business plan is based on a 70-30 ratio: 70% of Lifetime's revenues are derived from advertising revenues, and 30% from cable operator license fees. In order to be able to keep Lifetime's license fee low (and thereby reduce costs to subscribers), Lifetime must deliver a "critical mass" of subscribers to advertisers through wide distribution in order to maintain advertising rates. Advertising rates are based on the extent of distribution of the service and viewer ratings. For many years, Lifetime has been ranked 6th in prime-time and 10th in total day ratings among cable program services Lifetime's Comments (pages 2-5) describe Lifetime's particular emphasis towards women and its attractiveness to cable operators and advertisers as a result of Lifetime's target audience. Lifetime delivers among the highest concentration of women viewers of any broadcast or cable program service. Lifetime could not maintain its current penetration levels if it were offered on an a la carte basis. As further stated in Lifetime's Comments (p. 10), a Paul Kagan study indicates that if retiering creates just a 10% reduction in subscribers, a programmer's cash flow may drop by as much as 66% while a 25% reduction in subscribers could wipe out any cash flow and actually create a loss. As described in Lifetime's Comments (pages 9-12), if Lifetime's penetration levels fall, Lifetime loses license fees, and for every $1 of license fees lost to Lifetime, Lifetime loses more than $2 in advertising revenues (as a result of the 70/30 ratio). Finally, if Lifetime fails to deliver the "critical mass" of subscribers to advertisers, its advertising revenues will spiral further downward. Consumers in the end will bear the brunt of rising license fees as programmers seek to maintain programming quality in the face of lost advertising revenues.

3. *Do carriage agreements for your programming services involve alteration of the terms of carriage for other programming services? If yes, please provide specific examples.*

   a. *Do such terms generally vary depending on whether the programming services are newly offered services, new to a system, or continuing on a system?*

   b. *Do such terms generally vary depending on the size of the operator?*

   c. *What other specific factors have been relevant to such agreements?*

Lifetime's affiliation agreements do not involve the alteration of terms of carriage for other programming services.

4. *Do carriage agreements for your programming involve any requirements or provisions for "bundling" of programming services, including programming you provide or other program services?*

Except for the requirement that the Lifetime Network be carried as a basic or expanded basic service as described in Paragraph 1 above, Lifetime's affiliation agreements do not generally involve any requirements or provisions for "bundling" of programming services. No provisions are contained in Lifetime's affiliation agreements that require the Lifetime Network to be offered with any particular program service, including related program services.

5. *When contracting with a large MSO, do the terms for carriage generally apply to all systems owned by the MSO, or do the terms vary by particular system? If the terms vary, what specific factors are relevant to different carriage terms, either to the programmer or operator?*

As described in Paragraphs 1 and 2 above, Lifetime's affiliation agreements with large MSO's generally apply to all systems owned by the MSO. Occasionally, different carriage terms (the variations have been generally described above) may be negotiated for different systems of the same MSO depending upon the channel line-up or channel placement of a particular system or upon the size or other characteristics of a particular market (e.g., an MSO system in Los Angeles, one of the largest markets, may receive more marketing allowance reimbursement from Lifetime than that MSO's system serving a smaller city in California)

6. *In what ways, if any, has the onset of rate regulation altered the terms of carriage for your programming services with cable operators or changed the requested terms of carriage?*

Since the onset of rate regulation, Lifetime has seen a remarkable change in the behavior of cable operators

a. The Lifetime Network has been dropped or repositioned to unfavorable channel placement in certain systems to make room for must carry or retransmission consent channels, especially because of the operator's reluctance to add any additional program services to its regulated tiers;

b. Cable operators have requested waivers or delays in contractually stipulated annual license fee increases;

c. Cable operators have refused to launch the Lifetime Network on systems where they were previously prepared to launch new program services;

d. Cable operators with Lifetime affiliation agreements that were expiring refused to enter into new agreements until various rate regulation questions have been resolved and clarified; and

e. Cable operators have pressured Lifetime to permit a la carte carriage of the Lifetime Network and in certain instances have simply moved the Lifetime Network to an a la carte tier without Lifetime's consent.

7. *Based on your experience, what specific incentives do you believe are necessary to encourage cable operators to carry additional and newly created programming services? How can the Commission create such incentives through its rate regulations?*

Lifetime believes that it has addressed these questions in the introduction of this letter, and more fully in its Comments and Reply Comments. A copy of Lifetime's Reply Comments, which discusses further the critical importance of promptly adopting a minimum mark-up on license fee increases for already-carried program services, is attached hereto for your convenience.

8. *How should the Commission fashion regulations that will not create inappropriate incentives for operators to add or delete low-cost, or more expensive, programming services? Are specific incentives necessary to encourage operators to carry low-cost or no-cost programming services? How can the Commission create such incentives through its rate regulations?*

Lifetime believes that it has addressed these questions in the introduction of this letter, and more fully in its Comments and Reply Comments. A copy of Lifetime's Reply Comments, which discusses further the critical importance of promptly adopting a minimum mark-up on license fee increases for already-carried program services, is attached hereto for your convenience.

9. *What specific incentives are necessary to encourage programming vendors to develop new programming services? How can the Commission create such incentives through its rate regulations?*

Lifetime believes that it has addressed these questions in the introduction of this letter, and more fully in its Comments and Reply Comments. A copy of Lifetime's Reply Comments, which discusses further the critical importance of promptly adopting a minimum mark-up on license fee increases for already-carried program services, is attached hereto for your convenience.

10. *How should the Commission's going forward regulations govern the migration of programming services from regulated tiers to unregulated individual or package offerings?*

As more fully described in Lifetime's Reply Comments, Lifetime opposes any standards that would encourage or sanction artificially-inspired migration of advertiser-supporter services to a la carte tiers. Independent programmers such as Lifetime stand at the greatest risk of losing their regulated tier position not based on the merits of Lifetime's program service but because of a regulatory advantage or an operator's equity stake in another programmer. As described in Paragraph 2 above, the viability of advertiser-supported services depends directly upon their ability to obtain and maintain broad distribution among cable system subscribers via carriage on regulated or the most broadly distributed tiers. Lifetime continues to believe that the FCC's case-by-case approach is the best method for dealing with disputes over migration of program services from a regulated tier to a la carte status. Lifetime has also urged the Commission to provide guidelines for operators seeking to move services back to regulated tiers without violating the negative option rule or incurring some other liability.

While Lifetime supports the concept of a "forbearance" tier for the launch of newly-added or "incubated" program services, Lifetime believes that "cloning" program services which are currently offered on a regulated tier for a forbearance tier or other a la carte or clustered packages is the functional equivalent of direct migration. Lifetime would thus oppose such artificial incentives to reduce the distribution of existing services through cloning onto the forbearance tier. As described in Paragraph 2 above, advertiser-supported services are dependent upon being distributed in a large package of offerings which can be distributed to subscribers for a low package fee. Lifetime's marketing efforts are primarily directed at cable operators and cable subscribers (e.g., tune-in advertising). If programming services, including Lifetime, were offered a la carte or in limited clusters on a forbearance tier, Lifetime would be required to spend significant dollars trying to encourage cable subscribers to specifically elect to purchase Lifetime or a Lifetime cluster. With a corresponding decrease in subscribers that would be inevitable due to a migration from a regulated to an unregulated cluster or a la carte package, Lifetime's advertising and license fee revenues would decrease significantly, leaving fewer dollars to spend on program investment. Cable operator fees would then have to be increased to compensate for lost viewers and lost advertising revenues. Ultimately, subscribers would be required to pay higher cable costs in order to receive the same, or in all likelihood lower quality, programming.

We appreciate the opportunity to submit these responses and we will be happy to furnish you with any additional assistance that you may require.

Very truly yours,

Jane Tollinger

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